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Attorneys for LISA NOVAK and PATRICK NOVAK

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LISA NOVAK and PATRICK NOVAK, as the
heirs and representatives of the decedent, Michael
Robert Novak,

Plaintiffs,

v.

CITY OF MADERA, a municipal entity of the
State of California, KAYLA CLARK, DORIAN
LASSO, ROBERT MAHONEY, and ANTHONY
MARTINEZ, and DOES 1 through 10, inclusive,

Defendants.

Case No.: 1:20-cv-00301-DAD-SKO

**STIPULATION AND ORDER TO
CONTINUE PLEADING
AMENDMENT DEADLINE**

(Doc. 18)

STIPULATION

Pursuant to Federal Rule of Civil Procedure 16(b)(4), Plaintiffs Lisa Novak and Patrick Novak (“Plaintiffs”) and Defendants Madera, Kayla Clark, Dorian Lasso, Robert Mahoney, and Anthony Martinez (“Defendants”) stipulate as follows:

1. Section V of the Court’s July 7, 2020 Scheduling Order set a deadline of January 7, 2021 for amendment of pleadings.

2. Plaintiffs seek to amend their complaint to substitute survival claims for their federal Stipulation and Order to Continue Pleading Amendment Deadline

wrongful death claims and to add pendant state law survival claims in their capacities as successors in interest to their deceased brother Michael Robert Novak's claims. Plaintiffs have good cause for the amendment because, since their complaint was filed, the Ninth Circuit issued a decision that suggests siblings cannot maintain their own 42 U.S.C. § 1983 claims as wrongful death claimants. *J.P. v. Cty of Alameda (J.P.)*, 803 Fed. App'x 106, 109 (9th Cir. 2020). The Ninth Circuit's decision in *J.P.* appears to call into question Plaintiffs' 42 U.S.C. § 1983 claims as filed. Plaintiffs seek to amend their complaint to proceed as their deceased brother Michael's successors in interest to bring 42 U.S.C. § 1983 survival claims for federal constitutional violations, as well as pendant state law survival claims.

3. This stipulation and order continues only the date for amending the pleadings; it does not alter any other dates this Court set. Indeed, the named parties and factual allegations of the First Amended Complaint remain the same and the facts to be ascertained in discovery are largely the same; it is the legal theories that will be altered and supplemented by the amendment. Moreover, to date, no formal written discovery and no depositions have yet taken place. This amendment does not prejudice any of the defendants, and it is not the product of undue delay, proposed in bad faith, or futile.

4. The deadline to seek to amend the pleadings is continued from January 7, 2021 to March 31, 2021.

It is so stipulated.

Dated: March 18, 2020

EMANUEL LAW GROUP

By: /s/ Todd P. Emanuel
Todd P. Emanuel
Attorney for Plaintiffs
LISA NOVAK and PATRICK NOVAK

Dated: March 18, 2020

ALLEN, GLAESSNER, HAZELWOOD & WERTH

By: /s/ Patrick Moriarty (authorized on 3/18/21)
Patrick Moriarty
Attorney for Defendants
MADERA, KAYLA CLARK, DORIAN LASSO,
ROBERT MAHONEY, and ANTHONY MARTINEZ

Stipulation and Order to Continue Pleading Amendment Deadline

ORDER

The Court, having reviewed the foregoing Stipulation (Doc. 18), and good cause appearing therefore:

IT IS HEREBY ORDERED that deadline to seek to amend the pleadings is continued from January 7, 2021, to March 31, 2021. All other dates set forth in the Scheduling Order (Doc. 12) remain unchanged.

IT IS SO ORDERED.

Dated: **March 19, 2021**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE